**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION N0.1241 OF 2005

Shri. Arun Maruti Singh. ..Petitioner.
Vs.
State of Maharashtra and ors. ..Respondents.

Mr.R.K. Maheshwari for Mr. K. Tated for the Petitioner.

Mr. A.S. Shitole, A.P.P. for the State.

**CORAM : V.M.KANADE,J.**
**DATED : 4/5/2005**

**P.C.:**

1. Heard learned counsel for the petitioner.

2. The petitioner is challenging the order of issuance of process passed by the Metropolitan Magistrate, 17th Court, Andheri, Mumbai on the complaint filed by the respondent No.2 U/s. 138 of the Negotiable Instruments Act. It is submitted that there is no existing debt or liability and no amount was outstanding and due and payable to the complainant. It is submitted that the cheques given to the complainant by way of security and thus blank cheques were misused by the complainant by depositing them in the bank. It is submitted that the process which is issued is liable to the

quashed.

3. It is not possible to accept the submissions made by the learned counsel for the petitioner as the question whether there was existing debt or liability is a question of fact which will have to be determined by the trial court after evidence is adduced by the complainant and the questions raised in this petition are accordingly kept open and the Trial Court is directed to decide these questions after evidence is adduced on merits and in accordance with law. The Trial Court to consider the application for exemption if filed by the petitioner sympathetically and will not insist that the petitioner should remain present on each and every date unless his presence is absolutely necessary. Petition is disposed of accordingly

**(V.M.KANADE, J.)**